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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Extrajudicial, summary or arbitrary executions

Addendum

Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, on his mission to Indonesia and East Timor from 3 to 13 July 1994

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I. BACKGROUND

A. Framework of the invitation by the Government of Indonesia

1. In a letter dated 19 November 1993, the Special Rapporteur on extrajudicial, summary or arbitrary executions expressed to the Government of Indonesia his interest in carrying out a visit to East Timor. In this context, he referred to Commission on Human Rights resolution 1993/71, "Extrajudicial, summary or arbitrary executions" and resolution 1993/47, "Human rights and thematic procedures", in which the Commission encouraged Governments to invite special rapporteurs to visit their countries, and 1993/97, "Situation in East Timor", in which the Commission urged the Government of Indonesia to invite the Special Rapporteur to visit East Timor and to facilitate the discharge of his mandate.

2. In its reply, the Government of Indonesia drew the Special Rapporteur's attention to the fact that the Commission members had adopted resolution 1993/97 by a vote; Indonesia and many other member countries had rejected the resolution. Therefore, Indonesia did not feel compelled to abide by its provisions. It was further stated that the Government of Indonesia would give due consideration to a request for a visit to Indonesia, including East Timor, of any special rapporteur, as long as it was based on United Nations consensus resolutions.

3. In a letter dated 24 January 1994, the Government of Indonesia extended to the Special Rapporteur an invitation to visit Indonesia (Jakarta and East Timor), in accordance with resolutions 1993/71 and 1993/47.

4. During a meeting with the Indonesian delegation at the fiftieth session of the Commission on Human Rights, the Special Rapporteur expressed the wish not to limit his mission to East Timor, but also to visit some regions of Indonesia, such as Aceh and Irian Jaya, where, according to the reports brought to his attention, grave violations of the right to life, continued to occur. 1/ This request was not accepted by the representatives of the Indonesian Government.

B. Purpose of the mission

5. The purpose of the Special Rapporteur's visit should be seen in the framework of the mandate entrusted to him by the Commission on Human Rights (see E/CN.4/1994/7, paras. 5-12) and in the light of the Chairman's statement on the situation of human rights in East Timor, agreed upon by consensus by the Commission on Human Rights at its fiftieth session (E/1994/24-E/CN.4/1994/132, para. 482). In this statement, the Chairman declared that the Commission noted with concern continuing allegations of human rights violations in East Timor and that a matter of preoccupation to the Commission was the incomplete information (emphasis added) concerning the number of people killed and the persons still unaccounted for as a result of the Dili violent incident of 12 November 1991. While acknowledging the efforts made to account for those persons, the Commission called upon the Government of Indonesia to continue its investigation on those still missing in the circumstances surrounding the matter.

6. The objectives of the Special Rapporteur were therefore the following:

(a) To collect more information about the tragic events that occurred at the Santa Cruz Cemetery in Dili on 12 November 1991 (see below, paras. 16-23 and E/CN.4/1992/30, paras. 279-286), and in particular to assess the Government's fulfilment of the standards under international law concerning the use of force by law-enforcement officials and its obligation to investigate all allegations of summary executions, to bring to justice their perpetrators, to provide compensation to the families of the victims and to prevent their occurrence. The Special Rapporteur based his analysis on several international instruments falling within his mandate (see E/CN.4/1994/7, paras. 9-10), and in particular the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by the General Assembly in its resolution 44/162, adopted by consensus on 15 December 1989. Given the particularities of the situation of the right to life in East Timor, the Special Rapporteur also took into account the Declaration on the Protection of All Persons from Enforced Disappearance, endorsed by the General Assembly in resolution 47/133 of 18 December 1992;

(b) To gather reliable information about the situation of the right to life in East Timor since the Dili killings.

7. During his visit, the Special Rapporteur clearly indicated to all the Indonesian authorities and the members of the security forces he met with, that, as mentioned in the Chairman's statement, the information so far provided to the Commission on Human Rights was insufficient, and that since the Indonesian Government had extended an invitation to him, he expected to receive new elements of information during his visit.

8. The Special Rapporteur wishes to emphasize here that his mission in no way aimed at an analysis of the political status of the territory of East Timor or at its level of economic development. The Special Rapporteur stresses that his only purpose is always to examine the respect for the right to life, irrespective of any other considerations including those mentioned above. Furthermore, such elements can in no way be invoked as grounds for any weakening of or derogation from the absolute character of the right to life.

C. Programme of the visit

9. The Special Rapporteur spent 4½ days in Jakarta, 1 in Denpasar and 4½ in East Timor (including a visit to Viqueque and Ossu, southern East Timor).

10. During his visit, the Special Rapporteur met with the following officials of the Indonesian Government (in chronological order): Minister for Foreign Affairs a.i. and high level officials of the Foreign Ministry, Jakarta Raya Military Commander, Minister for Home Affairs, Chief of National Police, Secretary-General of the Department of Defence and Security, Chief of General Staff of the Armed Forces, Military Commander of Zone IX (which includes East Timor), Governor of East Timor, East Timor District Attorney, Chief of the Court of East Timor Province, Members of the East Timor Local House of Representatives, Chief of East Timor Police, East Timor traditional leaders, Military Resort Commander of East Timor, members of the National Commission of Human Rights, members of the Human Rights Commission of the People's Consultative Assembly, Minister of Justice, Attorney-General.

11. In addition, the Special Rapporteur interviewed Xanana Gusmao (former leader of the Timorese clandestine resistance) at Cipinang Prison (Jakarta), one prisoner at Becora Prison and four at Balide Prison (both in Dili, East Timor). He had also expressed the wish to meet with six persons convicted by an Indonesian court of having organized the Dili demonstration of 12 November 1991. However, since those prisoners had been abruptly transferred from Becora Prison (Dili) to Semarang Prison (Central Java) on 12 June 1994, and taking into account his already full schedule, the Special Rapporteur decided, with the consent of the Indonesian authorities, to send his assistant to Semarang to interview the six prisoners on his behalf.

12. The Special Rapporteur also met representatives of non-governmental human rights organizations in Jakarta, members of the clergy in East Timor (including Bishop Belo) and witnesses of violations of the right to life in East Timor - including a number of eye-witnesses of the Dili killings. The Special Rapporteur also met with the Ambassador of the United States of America and the Ambassador of the Netherlands. On 12 July he held a press conference in Jakarta.

13. The Indonesian authorities cooperated fully with the Special Rapporteur during his visit. He was granted freedom of movement in East Timor, and he was able to talk to all the individuals he wished to meet.

14. The Special Rapporteur takes this opportunity to express his gratitude for the warm hospitality of the Indonesian authorities as well as for the full access to places and persons granted to him and his delegation.

D. East Timor and the thematic mechanisms of the Commission on Human Rights

15. In recent years, several of the thematic mechanisms of the Commission on Human Rights have received, and acted upon, allegations of human rights violations by members of the Indonesian security forces in East Timor and, in connection with events in East Timor, in Indonesia. The Special Rapporteur on extrajudicial, summary or arbitrary executions repeatedly expressed concern at reports of shortcomings in the investigations into the Santa Cruz killings. The Special Rapporteur on the question of torture transmitted to the Government of Indonesia information concerning several persons who were allegedly subjected to torture while in detention. Some of them were said to have been detained in connection with the events of 12 November 1991. The Working Group on Arbitrary Detention investigated the case of one person accused and convicted of masterminding a demonstration in Jakarta to protest against the Santa Cruz killings. The Working Group decided that his arrest and continued detention upon conviction were arbitrary. In the case of another person serving a prison sentence of nine years for his involvement in the demonstration on 12 November 1991 in Dili, the Working Group on Arbitrary Detention transmitted to the Government of Indonesia an urgent appeal after receiving reports that he had been subjected to ill-treatment putting his life at risk. The Working Group on Enforced or Involuntary Disappearances also examined the situation of disappearances in Indonesia and East Timor. At the time of its most recent report, there were still 375 outstanding cases (see also below, para. 22). More detailed information on the activities of the thematic mechanisms may be found in their respective reports to the Commission on Human Rights.

E. Violations of the right to life in East Timor: background and context

16. East Timor was a colony of Portugal for more than 455 years. On 7 December 1975, a full-scale invasion of East Timor by the Indonesian armed forces put an end to a decolonization process which had started with the April 1974 coup d'état in Portugal. On 17 July 1976 East Timor was declared Indonesia's twenty-seventh province. The United Nations has never recognized Indonesia's sovereignty over the territory. Armed and peaceful underground opposition to the integration with Indonesia has continued since the invasion, in spite of the heavy Indonesian military presence in East Timor and the tight control of the population.

17. There have been repeated allegations according to which between 1975 and 1980, an estimated 100,000 Timorese out of a population of 700,000 were killed by the Indonesian armed forces. Between 1980 and 1984, it has been further alleged that another 100,000 were killed or died of starvation or disease.

18. The most serious and notorious case of extrajudicial killings since then took place on 12 November 1991 at the Santa Cruz Cemetery, in Dili. On that date, unarmed civilians participated in a peaceful pro-independence march to the grave of Sebastiao Gomes, a young man killed on 28 October during an attack by Indonesian security forces on the Motael church, where he and a number of other Timorese political activists had taken refuge.

19. The procession, in which an estimated 3,000 to 4,000 people (mainly students and other young people) participated, started after the early memorial mass for Sebastiao Gomes. Banners and slogans hostile to the integration of East Timor with Indonesia were displayed during the march. Along the route (approximately 1 km from the cemetery), a major and a private in civilian dress were reportedly injured by demonstrators. The killings started in front of the entrance to the cemetery when soldiers opened fire on the crowd, minutes after it had arrived. The walls of the cemetery and the large number of people made it difficult to escape. The shooting continued for between 5 and 15 minutes 2/ and was followed by further shooting, beating and stabbing inside the perimeter of the cemetery. Moreover, according to eye-witness testimonies gathered by the Special Rapporteur, a number of wounded demonstrators transported in trucks to the military hospital were ill-treated or deliberately killed during the journey or at the hospital's morgue.

20. It was reported that on that same day, and on the following days, road-blocks were set up and operations carried out in Dili and in neighbouring villages to round up survivors of the killings who had managed to escape, and allegedly to kill some of them.

21. During his visit, the Special Rapporteur was told by the Indonesian authorities that 19 persons had been killed on 12 November 1991, although the National Commission of Inquiry (see para. 28 and annex, para. 7) had affirmed that "there were sufficiently strong grounds to conclude that the death casualties totalled about 50". According to the testimonies gathered in East Timor by the Special Rapporteur, the total number of persons killed was estimated to be between 150 and 270, although some estimated it to

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be around 400. It was alleged that the bodies of the victims had been buried in unmarked mass graves or dumped in the sea.

22. There exist large discrepancies between the assessments of the number of cases of disappearances subsequent to the Santa Cruz killings. This is true for the figures reported by non-governmental entities, as well as for those given by the Indonesian authorities, which acknowledged only 66 cases of disappearances but whose lists of names contained anomalies. 3/ The Working Group on Enforced or Involuntary Disappearances transmitted to the Government of Indonesia a total of 224 cases of disappearances alleged to have occurred in connection with the Santa Cruz killings.

23. The Indonesian Government and military authorities expressed regret for the Santa Cruz killings, which they consider as a tragic accident that arose out of a provocative action by anti-integration elements.

F. The Indonesian Government's actions regarding cases of extrajudicial, summary or arbitrary executions in the light of international standards: the example of the Santa Cruz killings

24. During his mission to Jakarta and East Timor, the Special Rapporteur examined, in the light of international standards, the way in which the Indonesian authorities had acted regarding the killings of unarmed civilians by members of the security forces on 12 November 1991 at the Santa Cruz Cemetery, as well as regarding allegations of alleged subsequent killings. 4/ In so doing, the Special Rapporteur focused on the following main aspects:

(a) The investigations carried out to establish the facts, to identify the perpetrators, to assess the responsibilities for the killings, to determine the number and identity of the victims and missing persons and to locate them;

(b) The actions taken to bring to justice the perpetrators of the killings and disappearances;

(c) The measures aimed at compensating the victims or their families;

(d) The endeavours to prevent the recurrence of such tragedies.

25. A brief description of those actions follows. An analysis can be found in the section containing the Special Rapporteur's conclusions.

G. The investigations

26. The investigative steps taken subsequent to the killings included an internal military investigation immediately after the killings, appointing by presidential decree a National Commission of Inquiry, and actions by the police aimed at identifying the corpses of the victims and determining the whereabouts of the missing persons. Those steps are described below. The Special Rapporteur will comment on them in his conclusions.

27. An internal military investigation, headed by the Deputy Chief of Strategic Intelligence, began in November 1991, before the arrival of the National Commission of Inquiry in Dili. During his visit, the Special Rapporteur requested, both orally and by a letter dated 11 July 1994, that the report of this investigation be made available to him. At the time of the completion of the present report, this request had not been satisfied.

28. A National Commission of Inquiry (NCI), established by Presidential Decree No. 53, commenced its work on 21 November 1991. Its activities covered the preparatory gathering of information in Jakarta from 21 to 27 November, followed by an investigation in East Timor from 28 November to 14 December 1991. The NCI met with a variety of representatives of the local authorities, members of the Church, members of the armed forces, private individuals and eye-witnesses; visited hospitals and police detention centres; inspected Santa Cruz Cemetery; exhumed one grave at Hera Cemetery; and carried out unsuccessful inspections and excavations at locations at Pasir Putih, Tasi Tolu and Tibar in response to information received from the local people alleging that those were places of mass burial of victims. During his visit, the Special Rapporteur requested, both orally and in his letter of 11 July 1994, that the full report of this investigation be made available to him. At the time of the completion of the present report, this request had not been satisfied. The Special Rapporteur therefore had to rely on the preliminary report of the NCI, dated 26 December 1991, the conclusions of which are reproduced in the annex.

29. The Chief of the East Timor Police explained to the Special Rapporteur the steps taken by the local security forces to identify the bodies of the 19 acknowledged victims; one of them, a foreigner, could be identified because he was carrying identification documents. The remaining 18 corpses were buried the day after the killings (13 November 1991), as the morgue of the hospital could accommodate only three to four bodies. This was done after appeals had been made unsuccessfully over the radio, on television and in newspapers for the families to come and identify the bodies. The fingerprints of the victims had been taken but, due to the fact that the police were very busy interrogating the 308 suspects arrested at the cemetery, photographs of the bodies had not been taken. Identification had been impossible because of the lack of dental records and other technology. The Chief of Police also told the Special Rapporteur that medical certificates had been issued by the hospital concerning the 19 bodies.

30. As regards the investigations carried out concerning the fate and whereabouts of the missing persons, the Chief of Police informed the Special Rapporteur that a public appeal had been made on 7 December 1991 to encourage the relatives of missing persons to report the cases. Many people had lodged complaints with the police regarding missing relatives (the last of those reports was made in early 1992); records had been established and communicated to the Commander. The police had tried to locate the missing persons according to the relevant police guidelines. Orders were issued to police sub-offices in East Timor and to provincial police chiefs throughout Indonesia to collect data on newcomers to their area. However, there was no special investigative team dealing with disappearance cases.

31. The Special Rapporteur was informed that the number of persons still missing had been reduced from 66 to 56 as a result of the investigations

carried out by the Government of Indonesia: one person had been found in his house, two others had come forward, one had fled the country, two were in Jakarta; four bodies were found outside Dili, but it could not be ascertained if these were the remains of persons considered missing (see para. 57 below).

32. During his visit, the Special Rapporteur requested, both orally and in his letter of 11 July 1994, that the medical files of the 18 unidentified bodies, copies of the above-mentioned appeals to the public, the files of the persons whose disappearance had been reported by their family, and the police guidelines for the investigations of disappearances be made available to him. At the time of the completion of the present report, none of those requests had been satisfied.

H. Prosecution of the perpetrators

33. The Honorary Military Council, which was established after the NCI submitted its preliminary report to the President, began its work in January 1992. By a letter dated 27 February 1992 from the Permanent Representative of Indonesia to the United Nations Office at Geneva addressed to the Chairman of the Commission on Human Rights (E/CN.4/1992/79), the salient parts of the announcement made by the Indonesian Chief of Staff of the Army on the results of the investigation conducted by the Honorary Military Council were communicated as follows:

> "After thoroughly studying the report of the Council, the Chief of Staff of the Army came to the conclusion that there were three categories of offences/misconduct committed by the Local Commander of the Army and his subordinates in the handling of the 12 November incident. It is deemed necessary, therefore, to take the following actions:
>
> "1. Six officers who were found guilty of misconduct will be punished: three officers will be dismissed from military service, two officers will not be given any post within the organizational structure of the Army although [they remain] still on active duty, and one officer temporarily will not be given any post within the organizational structure of the Army.
>
> "2. The field commander and members of the military who acted without command and beyond acceptable norms will be brought before the Military Court in accordance with the laws and regulations. The number of persons to be brought to the Military Courts is: four officers, three sub-officers and one private.
>
> "3. Further investigations will be pursued concerning five officers who failed to take appropriate actions during the incident".

34. The court martial set up by the Indonesian military as a response to the matters arising out of the 12 November killings took place at Denpasar, Bali, from 26 May to 6 June 1992. Ten low-ranking members of the security forces were convicted under article 103, paragraph 1, of the Military Criminal Code for disobeying orders. Only one of them was found guilty of assault, in violation of article 351 of the Criminal Code, for cutting off the ears of a demonstrator. The others received disciplinary sentences. That is to say that none of the military personnel was charged with murder or manslaughter.

The Commander of the Armed Forces explained to the Special Rapporteur that the reason for this was that "there was no evidence on who killed who". The sentences ranged from 8 to 18 months.

35. The Special Rapporteur was told that the six senior officers mentioned above were responsible for intelligence and security in East Timor and it was therefore their responsibility to take action to forestall the demonstration; they were punished because they were commanding the troops that participated in the incident, but had given no order to open fire on the demonstrators. The Special Rapporteur was given no further information on the grounds for punishing those officers.

36. Four Timorese were convicted of subversion and nine were tried on felony, incitement to hatred or sedition charges in trials in Dili and Jakarta. They were charged in connection with either the Dili demonstration or the demonstration in Jakarta to protest the killings. The sentences were extremely harsh (many were condemned to 9, 10 and 15 years' imprisonment), and one Timorese accused of having organized the demonstration was sentenced to life imprisonment.

I. Compensation of the relatives

37. The Special Rapporteur was told that the practice in the event of a death caused by soldiers is to give a bag of rice and a piece of cloth to the family of the victim. According to the military commander of East Timor, it is rather 3 million rupiahs and 50 kg of rice. However, the Indonesian officials met by the Special Rapporteur declared that no compensation had been granted to the families of the persons killed or disappeared.

J. Prevention

38. The Minister of Defence and Security declared that the rules concerning riot control, as well as the equipment, had been improved. Furthermore, a bill on demonstrations was being drafted. However, the Commander-in-Chief of the Armed Forces informed the Special Rapporteur that no changes had been made in the teaching programme of the soldiers, because the present one was in accordance with the needs. The essence of the problem had been the insubordination of irresponsible officers in the field. The Chief of the National Police informed the Special Rapporteur that the use of firearms by the police was very selective. Arms were not issued to policemen below the rank of sergeant and were used only in field operations. Warning shots should be fired, and the last resort should be non-lethal shots.

K. Violations of the right to life since 12 November 1991

39. The Secretary-General of the Department of Defence and Security told the Special Rapporteur that there had been no further deaths since the Dili incident and no combat against the armed resistance. The Chief of General Staff of the Armed Forces declared that no one had been killed in demonstrations, but that it was possible that deaths had occurred during armed clashes in the countryside.

40. While the number of cases of human rights violations seems to have substantially decreased in East Timor since 1991, the testimonies and reports

gathered by the Special Rapporteur clearly show that violations of the right to freedom of expression, association and peaceful assembly. arbitrary arrests, disappearances, torture and extrajudicial executions continue to occur. Information on the cases received will be processed and transmitted to the Government of Indonesia, in accordance with the Special Rapporteur's methods of work. A summary will be included in the annual report to the Commission. Information of relevance to other mechanisms of the Commission on Human Rights will be passed on to those mechanisms.

II. CONCLUSIONS

41. The Special Rapporteur based the following conclusions on the information given to him during the meetings he held in Jakarta and in East Timor, on documentary evidence brought to his attention before and during his mission, and on the various reliable testimonies he gathered. It should be noted once again that during his visit the Special Rapporteur requested, both orally and by a letter dated 11 July 1994, that some important official documents referred to by the Indonesian authorities, mostly reports regarding the Santa Cruz killings, be made available to him. At the time of the completion of the present report, this request had not been satisfied.

42. The Special Rapporteur believes that, in examining the situation of the right to life in East Timor, other grave human rights violations attributed to the Indonesian armed forces in Indonesia itself (for instance in Aceh and Iryan Jaya), as described in his previous reports to the Commission, should be borne in mind. In particular, the patterns of dealing violently with political dissent and the virtual impunity enjoyed by members of the security forces responsible for human rights violations should be recalled.

A. The Government's responsibility in the killings

43. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990, provide that law enforcement officials, in carrying out their duties, shall as far as possible apply non-violent means and shall only use force in exceptional cases including self-defence or defence of others against the imminent threat of death or serious injury. Such force must be proportional to these objectives and the seriousness of the crime, and must minimize damage and injury. Force may only be used when less extreme means are insufficient. Of particular relevance in the context of the Santa Cruz killings are principles 12 to 14, which prohibit the use of force against participants in lawful and peaceful assemblies. Force may only be used to the minimum extent necessary in the dispersal of unlawful assemblies.

44. The Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in its resolution 34/169 of 17 December 1979, provides in article 3, that "[l]aw enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty".

45. The Special Rapporteur received reports indicating that the security forces were fully aware days in advance of the preparations for the demonstration. For example, it was reported that on 11 November members of the security forces had tried to dissuade people to take part in the

demonstration. It was also reported by some sources that trenches had been dug with road-building machines during the days preceding the demonstration, allegedly to be used subsequently as mass graves. Furthermore, taking into account the number of security personnel and informers present in Dili, the Special Rapporteur is of the opinion that the authorities could not possibly have been unaware of the preparations for the 12 November demonstration.

46. The report of the NCI makes references to "an uncontrollable group of security personnel, who were not in proper formation nor in proper uniform and obviously in a highly-charged emotional state (...) a group of unorganized security personnel, acting outside any control or command, also fired shots and committed beatings, causing more casualties". The Chief of General Staff of the Army told the Special Rapporteur that those men were not irregular forces but troops out of uniform who had their weapons but who had no time to go back to their barracks for their uniforms.

47. It becomes clear from all the testimonies gathered by the Special Rapporteur - apart from those of some Indonesian officials, who claimed that the demonstrators were armed with knives and grenades and had tried to seize firearms from the soldiers - that the demonstrators carried no firearms. The Special Rapporteur is unaware of any evidence, in the trial documents or elsewhere, to the contrary. According to witnesses met by the Special Rapporteur, the sticks produced in court at the Dili trials were in fact used to hold up the banners, not as weapons. The only acts of violence reported, namely the stabbing of a major in plain clothes and the beating of a private, took place almost one hour before, and more than one kilometre away from Santa Cruz Cemetery. The Special Rapporteur asked all the officials he met with whether members of the security forces had been killed on 12 November 1991. The answers were invariably negative. Furthermore, the film footage taken by foreign journalists within the cemetery viewed by the Special Rapporteur shows soldiers moving around the cemetery, apparently without any fear or constraint, while others are beating people on the ground. But even if the claims that the demonstrators were threatening the lives of members of the security forces had been supported by the available evidence, it would not explain why the demonstrators who were trying to flee the scene of the killings were shot in the back; why, after the shooting had stopped, soldiers went on stabbing, kicking and beating the survivors (including the wounded) inside the cemetery, on the way to the hospital, and allegedly also at the hospital itself; or why sporadic shooting was heard throughout the city and in neighbouring villages during the rest of the day, and possibly during several days. The violence of the security forces towards the demonstrators was illustrated by the information concerning the 91 wounded obtained by NCI at the "Wira Husada" Military Hospital and reflected in its report: 42 persons suffered gunshot wounds, 14 stab wounds and 35 wounds caused by blunt instruments.

48. The Special Rapporteur, after careful consideration of the available evidence, including the numerous eye-witness testimonies he gathered, reached the following conclusions:

(a) A proper crowd control operation could have been set up beforehand to deal with the demonstration, thus avoiding the killings;

(b) The forces that perpetrated the killings on 12 November 1991 were regular members of the armed forces;

(c) The procession that took place in Dili on 12 November 1991 was a peaceful demonstration of political dissent by unarmed civilians; the claims of some officials that the security forces had fired in self-defence and had respected the principles of the necessity and the proportionality of the use of lethal force are unsubstantiated;

(d) There are, therefore, reasons to believe that the actions of the security forces were not a spontaneous reaction to a riotous mob, but rather a planned military operation designed to deal with a public expression of political dissent in a way not in accordance with international human rights standards.

B. Analysis of the investigations

49. The following paragraphs contain the Special Rapporteur's analysis, in the light of the pertinent international standards, of the measures taken by the Government of Indonesia.

50. The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by the General Assembly in its resolution 44/162 of 15 December 1989 spell out, *inter alia*, the following principles regarding investigations on allegations of extrajudicial, summary or arbitrary executions.

51. Principle 9 states: "There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary execution... The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses..." Principle 10 states, *inter alia*, that "[t]hose persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation".

52. From the information he gathered during meetings with the representative of the East Timor judiciary and law enforcement authorities, the Special Rapporteur concluded the following:

(a) The investigation carried out by the police forces was not thorough, as will be shown below;

(b) Given that the police is itself a part of the armed forces and the grave allegations concerning the adverse role of the police in the Santa Cruz killings and subsequent incidents, the conditions for an independent and impartial investigation were not present;

(c) The forensic examination was inadequate. Although a medical examination was carried out by the hospital on the 19 acknowledged corpses, no adequate autopsies were performed. The Chief of Police told the Special Rapporteur that the necessary technological means were not available in East Timor, and that no forensic expert was sent from Jakarta. Likewise, no ballistic examination was conducted to connect the bullets fired with the weapons of the members of the security forces present at the cemetery, even though such an analysis could have been conducted later in the capital;

(d) The criminal investigation was inadequate, failing to clarify either the identity of the perpetrators or the victims, nor even the number of the latter. It did not determine the fate and whereabouts of the missing persons. In fact, it appears that the witnesses interrogated by the police were questioned on their involvement in the organization of the demonstrations rather than on possible unlawful acts carried out by members of the security forces, or the identity of the killed and disappeared.

53. Principle 11 states that "In cases in which the established procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse... Governments shall pursue investigations through an independent Commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The Commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles."

54. The Special Rapporteur feels that the creation of the National Commission of Inquiry was an encouraging initiative. As regards the work of the NCI, he reached the following conclusions:

(a) The NCI was created by presidential decree and its composition was widely criticized, for it did not include any member totally independent of the Government. Most of the East Timorese met by the Special Rapporteur declared that the NCI had not been trusted by the population;

(b) None of the members of the NCI had the necessary technical expertise to correct the shortcomings found in the investigations carried out by the police. For instance, the Commission should have conducted a thorough search for alleged mass burial sites, carried out full exhumations of known graves, performed proper autopsies and examined ballistic evidence. As regards the last point, the only finding NCI reported was that there were 70 bullet marks in Santa Cruz Cemetery. Another example of a lack of competence is shown by the unprofessional manner in which the only exhumation was carried out, and by the irrelevance of the conclusions drawn therefrom (see below, para. 57 (d)).

(c) The Special Rapporteur welcomes the creation of the National Human Rights Commission (NHRC), established by presidential decree in June 1993, as a very positive step towards improved respect for human rights. However, it has so far not dealt with human rights violations in East Timor, and in particular the Santa Cruz killings. Moreover, most observers met by the Special Rapporteur were of the opinion that the NHRC had neither the mandate _5/_ nor the means to deal efficiently with this case. _6/_

55. Principle 12 states: "The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology... If the body has been

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buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques." Principle 13 states that "[t]he autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death... Detailed colour photographs of the deceased shall be included in the autopsy report..."

56. As regards the way in which the investigations dealt with the bodies of the victims, the Special Rapporteur concluded the following: According to the Chief of the East Timor Police, the bodies of the acknowledged 19 victims were buried at Hera on 13 November, one day after the killings. No adequate autopsy had been performed, no pictures of the corpses had been taken and, to date, 18 of the bodies remain unidentified. It is not known what measures were taken as regards the bodies of victims allegedly buried in mass graves. The Special Rapporteur therefore reached the same conclusion as the NCI, which reported that "there was careless handling of those who died, because although the visum et repertums were performed the deceased were not properly identified. Little opportunity was given to the families/friends of the victims to identify the bodies".

57. As regards the information provided by the Government according to which 10 of the 66 missing persons had been found, the Special Rapporteur notes the following:

(a) The four bodies found in July 1992 outside Dili could not be identified nor could their remains be linked to persons reported missing after the Santa Cruz killings. However, the Government considered that they could constitute a clarification of the fate of four individuals included in its list of 66 missing persons;

(b) Only two persons out of the 10 whom the Government had reported as having been found were in fact included in the list of 66 names;

(c) According to all the witnesses met by the Special Rapporteur and contrary to the declarations made by the Chef of the East Timor Police, no appeal was made on 12 or 13 November 1991 for relatives of missing persons to come to the hospital to identify the bodies of the 19 victims;

(d) The Chief of Police told the Special Rapporteur that a tractor had been used by the NCI to excavate graves. The Special Rapporteur cannot help being surprised that such an indiscriminate means of digging, contrary to the basic methodology of any expert exhumation and likely to be detrimental to the outcome of any subsequent forensic analysis, was used. The conclusions drawn from this exhumation were irrelevant: the victim was buried in a coffin, completely dressed, and there was only one corpse in the grave. No autopsy was conducted on the body, and therefore no pertinent information, such as the identity of the corpse or the cause of death, was given. However, the Military Commander of East Timor told the Special Rapporteur that the normal procedure to deal with a case of a civilian killed was to conduct a forensic analysis, and that a ballistics expert was usually brought from Jakarta. The Special Rapporteur was also informed that four graves were found in July 1992, but that forensic tests could not conclusively tie the remains to the Santa Cruz killings, and that the identity of the deceased could not be determined.

58. Principle 15 states: "Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations."

59. As regards the atmosphere in which the investigations were carried out, the Special Rapporteur concluded the following: Most of the eye-witnesses interviewed by the NCI were held in prison or military hospital and the meetings are therefore believed to have been monitored by the security forces, i.e. not conducted confidentially. In fact, NCI itself concluded that it had "... faced obstacles because a number of prospective witnesses had not been willing to give their account of the event because of doubt and concern that they would be directly incriminated in the 12 November 1991 incident in Dili, or out of fear that they would be regarded as belonging to the anti-integration group."

60. Principle 17 states: "A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of facts and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it." To the knowledge of the Special Rapporteur, the only public report of the investigations carried out concerning the Santa Cruz killings is the preliminary report of the NCI. Neither the report of the internal military investigations nor that of the Honorary Military Council has been made public.

61. As regards the fate of the so far undetermined number of persons missing as a consequence of the Santa Cruz killings, the Special Rapporteur wishes to recall here article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly in its resolution 47/133 of 18 December 1992, which provides that:

> "1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

> "2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.
>
> "3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.
>
> "4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.
>
> "5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.
>
> "6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified."

62. As regard the implementation of these provisions, the Special Rapporteur reached the following conclusions:

(a) As noted earlier by the Special Rapporteur, there is no independent State authority capable of investigating cases of disappearances in East Timor;

(b) Apart from the above-mentioned measures taken by the police to try to locate the 66 persons reported missing, there is no information on efforts made to investigate the alleged hundreds of cases of disappearances that have not been formally brought up with the authorities;

(c) As noted above, and according to the declarations of the Chief of Police himself, the necessary resources and technology have not been made available so as to allow a meaningful investigation to be conducted;

(d) The families are afraid of reporting the death or disappearance of their relatives, because they think they will be brought to court for having links with the clandestine resistance or for having supported the demonstration. Indeed, the Special Rapporteur was indeed told that anyone who presents a complaint is automatically considered to be subversive. It was reported, for example, that some of the victims had died of their wounds at home, but that the families had declared that they had died of malaria or diarrhoea. Most were too afraid even to report to the Bishop.

63. The East Timor District Attorney explained to the Special Rapporteur that his office was not competent in offences involving military personnel. He further said that if a family complains about the disappearance of a relative, his office had no investigative power; he would informally ask the police to pay special attention to that case. But the complaint would have to be given directly to the police, and there were no avenues for civilians to force them

to carry out an investigation. He further stated that his office had no files about the Santa Cruz incident and had not participated in the NCI. Likewise, there was no investigation under way to identify the 18 bodies buried at Hera. The only actions taken by the District Attorney were related to the prosecution of participants in the demonstration.

64. With respect to the cases of disappearances:

(a) The Special Rapporteur feels that there is no ongoing investigation regarding the cases of the persons who remain missing;

(b) The Special Rapporteur was surprised when the Chief of the East Timor Police declared that no cases had been received from the Working Group on Enforced or Involuntary Disappearances;

(c) The Special Rapporteur is of the opinion that the dispute over the actual numbers of the dead and missing clearly indicates the need for further investigations. This controversy should, however, in no way obscure the need and the obligation to identify the dead and reveal the whereabouts of their remains, to identify and bring the perpetrators to justice and to compensate the families of the victims;

(d) The Special Rapporteur reached the conclusion that since the NCI completed its investigation, no institutionalized or organized effort has been made by the Indonesian authorities to account for the fate of the dead and disappeared. Furthermore, the authorities did not allow independent human rights organizations, either domestic or international, to carry out human rights monitoring.

C. Analysis of the prosecution of the members of the security forces responsible for the killings and disappearances

65. The following paragraphs contain the Special Rapporteur's analysis, in the light of the pertinent international standards, of the measures taken by the Government of Indonesia.

66. The consensus statement made by the Chairman of the Commission on Human Rights on 4 March 1992 called for "the Indonesian Government to bring to trial and punish all those [members of the armed forces] found responsible (E/1992/22-E/CN.4/1992/84, para. 457)".

67. Point 18 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions states that "Governments shall ensure that persons identified by the investigation as having participated in extra-legal, summary or arbitrary executions in any territory under their jurisdiction are brought to justice... This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed." Point 19 states that "... Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, summary or arbitrary executions."

68. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, provide that arbitrary or abusive use of force and firearms by law enforcement officials is to be punished as a criminal offence under national law.

69. As regards the fate of the so far undetermined number of persons missing as a consequence of the Santa Cruz killings, the Special Rapporteur wishes to recall article 1 of the Declaration on the Protection of All Persons from Enforced Disappearance, which reads as follows:

> "1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.
>
> "2. Any act of enforced disappearance places the person subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life."

Moreover, article 4, paragraph 1, of the Declaration states: "All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness." Article 16, paragraph 2, further states: "(Persons alleged to have committed any of the acts referred to in article 4, paragraph 1) shall be tried only by the competent ordinary court in each State, and not by any other special tribunal, in particular military courts." Article 17, paragraph 1, states: "Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified."

70. As regards the prosecution of the perpetrators of the Santa Cruz killings and connected grave human rights violations, the Special Rapporteur reached the following conclusions:

(a) According to the information brought to the attention of the Special Rapporteur, torture, murder and kidnapping are criminal offences under Indonesian law. They are also prohibited by the Military Criminal Code and by a variety of ministerial regulations. Other provisions of the Military Criminal Code are designed to curtail the abuse of authority by members of the security forces and to ensure that commanding officers take responsibility for crimes committed by their subordinates. Thus, the minimum instruments allowing for the prosecution of the perpetrators exist. However, members of the armed forces, including the police, who have committed crimes or have abused their authority can stand trial only before military courts, even in cases where the victims are civilians;

(b) In spite of the recommendations formulated by the Special Rapporteur on the question of torture subsequent to his visit to Indonesia and East Timor in November 1991 (E/CN.4/1992/17/Add.1, para. 80), victims of human rights violations or their relatives still do not have direct access to the judicial system in cases of abuses perpetrated by members of the security forces. Consequently, such complaints have to be filed with the police, which belongs to the armed forces. In practice, investigations are, therefore, rarely concluded. This can hardly be called an effective remedy. The Special Rapporteur is not aware of any provision entitling a civilian to bring such a complaint before a judicial or other authority if the police have rejected the complaint or refused to carry out an investigation. Even the Prosecutor has no authority to order the police to carry out an investigation. If the police find a complaint filed by a civilian to be well founded, the file is transmitted to the office of the Military Attorney-General, since the suspect would have to stand trial before a military court. This means that no civilian authority is involved in any way in dealing with a complaint filed by a civilian of an alleged encroachment on his fundamental rights. The Special Rapporteur feels that a system which places the task of correcting and suppressing abuses of authority by members of the army in that same institution will not easily inspire confidence. The Special Rapporteur believes that there is no reason why persons belonging to the military should be tried by military courts for offences committed against civilians during the essentially civil task of maintaining law and order.

(c) Despite the fundamental shortcomings of its investigation, NCI reached conclusions that engaged the responsibility of the security forces to a greater extent than was admitted by the police during the Special Rapporteur's visit: "according to information received from the Military Operational Command, the death toll reached 19 (...) but according to the account of other eye-witnesses and sources, the death toll exceeded 19 and their figures varied from 50, 60 to over 100. (...) Although the casualty toll until now was set at 19 dead and 91 wounded, the Commission feels that there are sufficiently strong grounds to conclude that the death casualties totalled about 50 while the wounded exceeded 91". NCI, however, gave no indication as to why the figure of "about 50" had been retained. During his visit, the Special Rapporteur was told by all the officials he met that only 19 persons had died as a result of the 12 November 1991 event. The Chief of the East Timor Police declared that 6 persons had died at the hospital on that same day, in the afternoon, and 13 at the site of the incident. The Special Rapporteur reiterates his view that the dispute over the actual number of the dead and missing should not obscure the need and the obligation to identify the dead and reveal the whereabouts of their remains, to bring the perpetrators to justice and to compensate the families of the victims;

(d) The report of NCI concluded that "action must be taken against all those involved in the 12 November 1991 incident in Dili and suspected of having violated the law, and they must be brought to trial in accordance with the rule of law, Pancasila 7/ and the 1945 Constitution". However, this statement does not specify or recommend who should be brought to justice;

(e) The Special Rapporteur feels that the court martial set up as a response to the Santa Cruz killings was an encouraging first step towards the accountability of members of the armed forces for violations of human rights. However, as mentioned above, the Court examined only the cases of 10 low-ranking members of the security forces, who were accused of having acted "without command and beyond acceptable norms". They were charged under article 103, paragraph 1, of the Military Criminal Code for disobeying orders. Only one of them was charged with assault, in violation of article 351 of the Code, for cutting off the ears of a demonstrator. That is to say that none of the few military personnel accused was charged with homicide, serious assault, or for having committed enforced disappearances. Likewise, there did not seem to have been any attempts made by the prosecution, for example by using ballistic evidence, to attribute to the accused the shots which caused deaths or wounds. The sentences meted out by the military tribunal ranged from 8 to 18 months, which, considering the seriousness of the human rights violations that were committed on 12 November 1991 and possibly subsequently, seem to the Special Rapporteur to be inappropriately light penalties. Furthermore, the fate of the missing persons continues to be unknown;

(f) The Honorary Military Council appointed by the President dealt with the cases of six senior officers and found them guilty of misconduct. This procedure was not public and did not involve the participation of the families or of independent observers. Many elements about it therefore remain obscure; for instance, the exact grounds for punishing those officers is not known, and in any event they were never brought to justice;

(g) The Special Rapporteur is of the opinion that the inadequacy of the charges and the inappropriately light sentences imposed by the court martial on the few members of the armed forces accused of having been implicated in the 12 November 1991 incident are in no way a fulfilment of the obligation to punish perpetrators, and thus to provide a deterrent for the recurrence of a similar tragedy in the future. On the contrary, he feels that they illustrate that little importance is given to the respect of the right to life by Indonesian law enforcement officials in East Timor. On the other hand, the 13 civilians involved in peaceful protest during and after 12 November 1991 were sentenced to terms of up to life imprisonment. In paragraph 4 of its resolution 1993/97, the Commission regretted "the disparity in the severity of sentences imposed on those civilians not indicted for violent activities - who should have been released without delay - on the one hand, and to the military involved in the violent incident, on the other". The Special Rapporteur is also of the opinion that there was an unreasonable disparity between the sentences passed upon the perpetrators and upon the victims; the latter were, in fact, those really blamed for the killings. He believes that this disparity is much more illustrative of an implacable determination to suppress political dissent than a genuine commitment to protect the right to life and prevent extrajudicial executions.

D. Compensation of the families and dependants of the victims

71. Principle 20 states: "The families and dependants of victims of extra-legal, summary or arbitrary executions shall be entitled to fair and adequate compensation within a reasonable period of time."

72. Article 19 of the Declaration states: "The victims of acts of enforced disappearance and their families shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation

as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation."

73. With respect to the above:

(a) According to the information brought to the attention of the Special Rapporteur, existing procedures for the redress and compensation of victims and relatives are ineffective and cumbersome. Members of the public with a human rights grievance face the daunting prospect of complaining to the armed forces, the very authority they believe to be responsible;

(b) According to the information gathered by the Special Rapporteur, the judiciary are largely shackled by the executive branch and the military, and the legal system suffers widespread corruption. The Special Rapporteur is concerned that there is no real right to defence in Indonesian courts. The few lawyers practising in East Timor are reportedly not trusted by the population, because they are considered to be linked to the Indonesian authorities;

(c) In the case of the Santa Cruz killings, no compensation has been granted, and no special mechanism has been created for that purpose. The Special Rapporteur believes that the first step towards compensation should be the identification of the dead and disappeared, which, in turn, requires the recognition by the Government of its responsibility.

E. Prevention

74. The Special Rapporteur believes that lessons regarding the behaviour of the security forces should have been drawn by the Indonesian authorities after the Santa Cruz killings, so as to take decisive action with a view to rendering the recurrence of such a tragedy impossible in the future. Unfortunately, the information gathered during meetings with Indonesian officials, both civilian and military, lead the Special Rapporteur to conclude that the conditions that allowed the Santa Cruz killings to occur are still present. In particular, the members of the security forces responsible for the abuses have not been held accountable and continue to enjoy virtual impunity.

75. The Special Rapporteur welcomes the drafting of a bill on demonstrations and hopes that it will include provisions on the control of the use of force by law enforcement officials and that its provisions will provide a legal framework for the rights to freedom of peaceful assembly and association. However, the measures taken to improve crowd control operations have proved insufficient, and force continues to be used to deal with peaceful demonstration, as was shown just three days after the Special Rapporteur's departure from East Timor. It was reported that on 14 July 1994, security forces violently broke up what was described by eye-witnesses as a largely peaceful demonstration at the University of East Timor (UNTIM) campus. The demonstration followed an incident which had occurred the day before, when three Indonesian students (some sources alleged that they may have been undercover military intelligence agents) insulted two Roman Catholic nuns. According to the information communicated to the Special Rapporteur by the Government of Indonesia, the situation became uncontrollable when the students

started throwing stones at the police. Clashes broke out between the crowd and the policemen. Many students were injured when they tried to jump over a fence in the commotion. The Government admitted that 15 persons were injured, of whom 11 were treated and discharged and 4 were hospitalized. However, the eye-witness account of the rector of UNTIM rejected the Government's version of the incident:

> "It is true that the demonstration initially proceeded in an orderly and peaceful fashion, as it had been granted a permit by the local police... It is not true that the mass rally turned brutal and highly emotional because of issues and incitement by irresponsible elements... It is our impression that the initiative for the physical clash started with the security forces violently attacking the demonstrators, which they did first with batons, kicks and striking people with their shields, tear-gas and attacks by two sniffer dogs. The East Timor Chief of Police in his press conference of 14 July 1994 even admitted that the wounded people were bruised all over and that their bodies were lacerated."

76. As noted earlier, the access of victims of human rights violations to the judiciary or to non-governmental organizations has not improved; no appropriate mechanisms to request an investigation or to file a complaint have been instituted. Institutionalized monitoring of the human rights situation in East Timor is not yet allowed. The fear of families of victims still prevents them from making their case known publicly. This was illustrated by the difficulties the Special Rapporteur encountered in trying to persuade victims or witnesses of human rights violations to meet with him in order to testify, and the precautions taken before, during and after such meetings. The Special Rapporteur clearly sensed terror among many East Timorese he had the opportunity to meet.

III. RECOMMENDATIONS

77. The Special Rapporteur believes that the Santa Cruz killings should not be considered as a thing of the past. They must not be forgotten, and there is still time to correct the shortcomings, noted at all levels, in the way in which violations of the right to life have been dealt with by the Indonesian authorities in East Timor: it is not too late to conduct proper investigations, to identify and bring to justice the perpetrators, to determine the fate and whereabouts of the missing persons, to grant compensation to the victims or their relatives, and to prevent the occurrence of further killings.

78. The Special Rapporteur urges the Indonesian authorities to carry out thorough, prompt and impartial investigations of all suspected cases of extrajudicial, summary or arbitrary executions and enforced or involuntary disappearances. Those investigations should be in accordance with the international standards set forth in the various instruments mentioned in this report, and should involve the armed forces, the relatives of the victims, the local clergy, non-governmental organizations, and, particularly, civilian authorities. The Special Rapporteur calls on the Government of Indonesia to establish a civilian police force as a matter of urgency. This police force should be placed under the authority of the Prosecutor. The Special Rapporteur wishes to recall that the recommendation to establish a civilian

police force had already been made by the Special Rapporteur on the question of torture after his visit to Indonesia and East Timor in 1991 (E/CN.4/1992/17).

79. In the case of the Santa Cruz killings and alleged subsequent grave human rights violations, the findings of the military inquiry should be made public and an additional investigation should be conducted by a new commission of inquiry. In this respect, and in addition to what was said earlier, the Special Rapporteur feels that the following aspects should be taken into consideration:

(a) The new commission of inquiry should be composed of individuals of recognized independence, impartiality and expertise. It should include specialists in anthropology, forensic science, ballistics, etc. If this expertise is not available in East Timor or in Indonesia, it should be provided internationally, through the United Nations or non-governmental organizations;

(b) The credibility of such an investigation could be increased by the participation of experts internationally recognized for their objectivity and competence. Such a presence would help to reduce amongst the East Timorese population the fear and mistrust which were so detrimental to the investigation of NCI;

(c) The commission should have at its disposal all the necessary budgetary and technical resources for effective investigation and shall have the authority to obtain all information necessary to the inquiry;

(d) All the necessary measures should be taken to protect complainants, witnesses and their families from violence, threats of violence, arrest or prosecution, or any other form of intimidation;

(e) The families of the victims shall be informed of and have access to any hearing, as well as any information relevant to the investigation, and shall be entitled to present evidence.

80. The purpose of the investigation should be to determine the following points:

(a) The circumstances of the killings;

(b) The number of persons killed, their identity and the location of their graves;

(c) The number of missing persons, their identity, their fate and exact whereabouts;

(d) The chain of command and the identity of all the perpetrators and their superiors, and their individual responsibility in the human rights violations.

81. The Special Rapporteur strongly believes that no confidence-building measures can be effective and no solution to the problems facing East Timor can be found before justice has been done. The first step for the Government

should be to recognize its responsibility and declare that killings, and not an "incident", took place in Santa Cruz. Full light should be shed, publicly, on all the tragic events described in this report, in accordance with the standards referred to above. An end should be put to impunity enjoyed by members of the Indonesian armed forces responsible for abuses. To that purpose, the Special Rapporteur recommends the following:

(a) The jurisdiction over such cases should be handed over to the ordinary civilian judiciary;

(b) The independence, fairness and transparency of the judiciary should be improved and guaranteed. Interference of the military at any stage of the proceedings, including the investigation, should be avoided. This should not exclude its cooperation, when it is requested. Corruption should be effectively fought;

(c) Provision should be made to allow victims or their families to initiate judicial proceedings. In particular, investigations into complaints by victims or their families should be compulsory and not left to the discretion of police authorities. Furthermore, victims or their families should be granted full participation in the proceedings, and free choice of independent counsel should be guaranteed;

(d) Persons identified by the investigation as being responsible for abuses, whoever they are, should be brought to justice. The proceedings should be public. Human rights violations should be offences under criminal law punishable by appropriate penalties, fully taking into account their seriousness;

(e) Acts constituting enforced disappearances should be considered as a continuing offence as long as the perpetrators continue to conceal the fate and whereabouts of persons who have disappeared and these facts remain unclarified;

(f) Equitable compensation should be granted without delay to the victims or their dependants and families.

82. As regards the access to justice for the victims or their relatives, the Special Rapporteur recommends that the Indonesian authorities apply, in addition to the various international principles referred to in this report, the following points embodied in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34 of 29 November 1985:

> "4. Victims 8/ should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
>
> "5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

"6. The responsiveness of judicial and administrative processes to the needs of the victims should be facilitated by:

"(a) Informing victims of their role and the scope, timing and progress of the proceedings and the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

"(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

"(c) Providing proper assistance to victims through the legal process;

"(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

"(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims".

83. As mentioned earlier, the involvement of the relatives of missing or killed persons into any sort of investigation is essential. The Special Rapporteur could notice himself that in the atmosphere of fear and suspicion currently prevailing in East Timor, the conditions conducive to such participation are not present. The Special Rapporteur therefore believes that a drastic reduction of the military presence in East Timor is a prerequisite for confidence-building measures allowing the families to feel safe enough to report about their missing or killed relatives. This reduction should not only affect combat units, but all troops present in the territory, including territorial battalions and military intelligence. In that regard, the Special Rapporteur welcomes the dissolution of the Special Military Command in East Timor in 1993, as well as the reductions of troops, especially combat battalions, already carried out.

84. The Special Rapporteur believes that the involvement of non-governmental organizations in all questions relating to human rights in East Timor - e.g. investigation, monitoring, legal assistance, information and training - should be allowed and encouraged by the Indonesian authorities:

(a) Independent NGOs should be created in East Timor and allowed to operate freely throughout the territory. At this stage, the Special Rapporteur feels that the involvement of the Catholic clergy (which at the moment is the only institution whose involvement with human rights questions is tolerated by the Indonesian authorities) in such organizations would be essential;

(b) Indonesian and international human rights NGOs should be granted full access to East Timor.

85. The Special Rapporteur believes that the National Human Rights Commission is not the most appropriate mechanism to deal with human rights violations in East Timor. Its mandate, the means of action at its disposal and its methods of work are insufficient. Furthermore, it is not trusted by the population of East Timor. In any event, it has not dealt with questions relating to East Timor. Consequently, the Special Rapporteur recommends that a commission for human rights in East Timor be created to monitor the situation of human rights, receive and independently investigate complaints, make recommendations to the competent authorities, and disseminate information about human rights. Its characteristics should be in accordance with the Principles relating to the status of national institutions (Commission on Human Rights resolution 1992/54, annex, adopted without a vote on 3 March 1992). The Special Rapporteur recommends that such a commission should be composed of individuals of recognized impartiality and independence representing the civil society of East Timor, including NGOs.

86. As provided for in article 3 of the Declaration on the Protection of All Persons from Enforced Disappearances the Special Rapporteur recommends that the Indonesian authorities "take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance". Following article 4, paragraph 2, of the Declaration, the Special Rapporteur suggests that "[m]itigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which could contribute to clarifying cases of enforced disappearance".

87. Measures should be taken to ensure that peaceful demonstrations of political dissent are dealt with in conformity with international standards. In particular, the use of force by law enforcement officials should be restricted accordingly. Furthermore, members of the security forces should be better trained in proper crowd control methods, and the appropriate non-lethal equipment for such operations should be made available to them. Training should also place more emphasis on human rights questions and should stress that a soldier receiving an order contrary to human rights has the right and duty not to obey it.

88. The Special Rapporteur recommends that the Indonesian Government invite the Working Group on Enforced or Involuntary Disappearances to carry out a mission. He expresses the hope that his recommendations will be implemented, in conjunction with those formulated by the Special Rapporteur on the question of torture after his visit to Indonesia and East Timor in November 1991. In particular, he encourages the Government to accede to major human rights instruments, such as the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Notes

1/ For activities undertaken in 1992 and 1993: on extrajudicial, summary or arbitrary executions, E/CN.4/1993/46, paras. 348-353, E/CN.4/1994/7, paras. 343-356; for torture, E/CN.4/1993/26, paras. 270-274, E/CN.4/1994/31, paras. 325-343; on arbitrary detention, E/CN.4/1994/27, annex II, decision No. 36/1993; on enforced or involuntary disappearances, E/CN.4/1993/25, paras. 278-290, E/CN.4/1994/26, paras. 260, 261 and 269.

2/ The Chief of the East Timor Police estimated that the shooting lasted for 10 to 15 minutes.

3/ See: E/CN.4/1994/26, para. 265 and Asia Watch, "Remembering History in East Timor", vol. 5, No. 8, April 1993, pp. 21-22.

4/ The Special Rapporteur will refer to the events of the 12 November as "killings", a word that, in his opinion, is more appropriate than the term "incident", used by many, including the Indonesian authorities. Indeed, in view of the number of victims, the Special Rapporteur deems it appropriate to speak of a "massacre".

5/ The presidential decree spells out that the NHRC shall "monitor and investigate the implementation of human rights and present views, considerations and suggestions to State institutions on the implementation of human rights".

6/ The Special Rapporteur was informed that the NHCR has a very limited budget, office facilities and staff and has no formal authority.

7/ The Pancasila is the state philosophy, which consists of the following five principles: (i) belief in one Supreme God; (ii) just and civilized humanity; (iii) the unity of Indonesia; (iv) democracy led by the inner wisdom of unanimity arising out of the deliberation among representatives; (v) social justice for the whole of the Indonesian people.

8/ In the terms of the Declaration, "the term 'victim' also includes, where appropriate, the immediate family or dependants of the direct victim ..." (para. 3).

Annex

ADVANCE REPORT OF THE NATIONAL COMMISSION OF INQUIRY INTO 12 NOVEMBER 1991 INCIDENT IN DILI-EAST TIMOR *

Conclusions

The Commission has strong reasons and grounds to arrive at the following conclusions:

1. The 12 November 1991 incident in Dili is the culmination of a series of earlier demonstration/incidents perpetrated by the anti-integration group/Fretilin SDP.

The Fretilin SDP, which are being increasingly isolated, have shifted their mode of operations from rural guerrilla to urban guerrilla, thereby abusively capitalizing on the development policy in East Timor based upon affection and prosperity and taking advantage of the situation, condition as well as the restive mood among the young people to instigate them to oppose integration as well as to attract world attention to their existence.

2. The 12 November 1991 Incident in Dili which caused a number of deaths and other casualties was clearly not an act ordered by or reflecting the policy of the Government of the Armed Forces, be it in the Capital or in the Province of East Timor. The 12 November 1991 Incident was essentially a tragedy which should be deeply regretted.

3. The 12 November 1991 demonstration in Dili showed elements of pre-meditated provocation by a group of anti-integration/Fretilin SDP and was not an orderly and peaceful procession dedicated to commemorate the death of Sebastiao Gomes.

4. The demonstrators, who largely consisted of young people have acted belligerently, emotionally and destructively, partly as a result of agitations by the anti-integration group/Fretilin SDP by whom they have been influenced for quite some time. Furthermore, they consciously exhibited Fretilin and Falintil flags, pictures of Fretilin SDP leader Xanana and banners and chanted anti-integration yells and insults at the members of the security apparatus.

5. A number of foreigners took an active part in that demonstration.

6. As the tense atmosphere reached a boiling point, started by the stabbing of an Armed Forces officer and the wounding of a private, and aggravated by the provocative belligerence and aggressive attitude assumed by the crowd which was perceived by the security personnel as posing a threat to their arms and to their safety, a spontaneous reaction took place among the security personnel to defend themselves, without command, resulting in the excessive shooting at the demonstrators, causing deaths and wounded. At the same time,

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* The text is reprinted as received from Amnesty International (AI Index ASA 21/03/92).

another group of unorganized security personnel, acting outside any control or command, also fired shots and committed beating, causing more casualties.

7. In the handling of the riotous condition during 12 November 1991 Incident, despite the presence of riot-control units, the Commission did not observe the optimal implementation of proper riot-control procedures. The actions of a number of security personnel exceeded acceptable norms and led to the casualties, be it in terms of deaths, gunshot wounds, stabbing wounds, or wounds by blunt instrument. Although the casualty toll until now was set at 19 dead and 91 wounded, the Commission feels that there are sufficiently strong grounds to conclude that the death casualties totalled about 50 while the wounded exceeded 91.

8. There was careless handling of those who died, because although the visum et repertums were performed the deceased were not properly identified. Little opportunity was given to the families/friends of the victims to identify the bodies.

9. The Commission is of the view that in order to uphold justice, action must be taken against all who were involved in the 12 November 1991 Incident in Dili and suspected of having violated the law, and they must be brought to trial in accordance with the Rule of Law, Pancasila and the 1945 Constitution upon which the Republic of Indonesia is based.

Epilogue

In undertaking its task, the NCI received full support from all sides, be it from the Government, the Armed Forces, Church Officials and community leaders. It has to acknowledge, however, that the NCI faced obstacles because a number of prospective witnesses were not willing to give their account of the event because of doubt and concern that they would be directly incriminated in the 12 November 1991 Incident in Dili, or out of fear they would be regarded as belonging to the anti-integration group.

Jakarta, 26 December 1991

National Commission of Inquiry

M. Djaelani	Head/Member	(signed)
Ben Mang Reng Say	Member	(signed)
Clementino Dos Reis Amaral	Member	(signed)
Harisoegiman	Member	(signed)
Hadi A. Wayarabi Alhadar	Member	(signed)
Anto Sujata	Member	(signed)
Sumitro	Member	(signed)

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